

Committee on Resources, Subcommittee on Energy & Mineral Resources

[energy](#) - - Rep. Barbara Cubin, Chairman

U.S. House of Representatives, Washington, D.C. 20515-6208 - - (202) 225-9297

Witness Statement

Testimony to the
Subcommittee on Energy and Mineral Resources of the
Committee on Resources of the
United States House of Representatives
April 25, 2001
Oil and Gas Permitting process for
oil and gas development on
Bureau of Land Management and Forest Service lands

Mr. Michael D. Watford
Chairman, President and Chief Executive Officer
Ultra Petroleum Corporation

Ladies and Gentlemen:

Thank you for the privilege of appearing before you today. As the President and CEO of an independent energy company primarily active in Wyoming, I can attest to the tremendous impact that federal laws and regulations have on our domestic oil and gas industry, particularly in the western states where so much of the land and minerals are owned by the federal government. Obtaining a bureaucracy's permission for exploration and development activity is an essential business component to a successful oil and gas company - literally as important as obtaining the best geophysical data, conducting the most precise drilling activity, and completing the wells with the greatest engineering expertise. Complying with governmental regulations is a daily part of our business that can and does have a tremendous impact on the bottom line and I applaud you for taking the time to listen to us today and to learn our perspectives on what works - and what could stand some improvement.

Ultra Petroleum is the quintessential success story of a small, independent oil and gas company. Started by a geophysicist who believed in a play and some investors who took the risk - Ultra came on the industry scene in 1996. The original management was a group of risk-takers, believing far more in the possibility of finding natural gas in a wildcat area than reality was anywhere near ready to bear forth. Standing between this aggressive group of risk-takers and investors and any chance of proving the success of their instincts stood the daunting task of navigating the National Environmental Policy Act (NEPA) and obtaining an Environmental Impact Statement (EIS) that would allow full field exploration and development in a 200,000 acre area that is nearer than any other major oil and gas field to the Teton and Yellowstone National Parks in Wyoming, three wilderness areas within the Bridger-Teton National Forest, and a Class I Airshed as defined by the Clean Air Act Amendments of 1990 - all during the last two years of the Clinton/Gore Administration.

We heard all of the horror stories of the EIS process and a Clinton-era, "pro-green" BLM. We watched the

neighboring Jonah EIS be delayed by a year over a threatened EPA appeal to the Council on Environmental Quality for unresolved bureaucratic opinions about air quality impacts and appropriate mitigation. We watched the Continental Divide EIS in south-central Wyoming stretch out to become a 5-year process as the land boundaries expanded and the studied elements compounded. We watched the Jack Morrow Hills EIS in Wyoming's Red Desert come to a screeching halt, at the directive of Secretary Babbitt, to start again with a new conservation-oriented alternative to be analyzed. Ultra is a small company with no other significant income or operations and we did not have 1 year - not to mention 5 - to be delayed. In addition, for the first time in the State of Wyoming, BLM had imposed a limit on the number of exploratory and developmental wells that could be drilled in our proposed EIS project area, by any operator, until the EIS was finalized. When I joined the company through a major management reorganization early in 1999, Ultra's financial future as a company was literally held hostage to the successful - and timely - completion of this EIS.

The Pinedale Anticline EIS process officially began in June 1998. The Final EIS and Record of Decision were issued by the BLM 25 months later in July 2000. The final document received the highest possible acceptance rating from the EPA. Most notably - the Record of Decision was not appealed by any environmental organization - local or national. Today, several operators including Ultra are actively drilling on the Pinedale Anticline with good success and our current geologic interpretations indicate that potential reserves are perhaps as much as 6 TCF. *This is larger than the current reserve estimates for Wyoming's other booming natural gas field, the Coal Bed Methane fields, in Northeast Wyoming - check for accuracy.* Numerous Applications for Permits to Drill (APDs) are pending with an overwhelmed BLM field office as operators rush to prove up their leases in this promising area. Pipeline capacity exists and will be expanded and we are all poised to do our share to contribute to supplying this nation with its demands for natural gas.

So, specific for your topic today, how did the BLM land management and USFS air permitting processes result in completion of this EIS in just 2 years, particularly in such a tremendously sensitive resource area including regional air quality concerns and crucial winter range and habitat impacts for mule deer and sage grouse? The answer is not simple and the credit is to be shared by many who took part in setting precedents for doing things differently - and it paid off, as evidenced by the active drilling today. Some things that come to mind:

1. BLM assigned a specific, seasoned employee from its District Office to be solely dedicated to overseeing development of the EIS.
2. EPA and USFS were brought into the process early to develop the scope of the document and they continually were engaged in the process throughout its development which avoided last minute concerns and re-writes.
3. Ultra hired a full-time Environmental Specialist whose sole responsibility was to negotiate and complete the EIS within 2 years. We also considered and agreed to efforts that were above and beyond the required minimum level of environmental protection, as long as they made sense economically and truly resulted in a quantifiable environmental benefit.
4. The data used - be it air quality modeling or habitat impacts - was treated in the EIS in the most conservative manner possible in order to avoid the time-consuming and often appeal able position of having to defend conclusions questionable to the environmental community.
5. Ultra worked diligently with the local environmental groups who have a track record for legally appealing other EIS's in the state to better understood their concerns and we worked to address these

by proposing creative operational alternatives to be considered in the EIS.

6. In addition, the BLM actively promoted the public input intended by NEPA and regularly held field trips and open houses throughout the EIS process - not just during the original scoping period. Although this was not the normal process, it has served to reduce controversy and improve the public's understanding of what is now being allowed.

7. Finally, the ROD required, for the first time in Wyoming, an "Adaptive Environmental Management Process" which has instituted an annual public participation and review process designed to ensure that what was predicted in the EIS (and consequently drove the mitigation requirements) is in fact, what is happening. The Adaptive Management process is intended to provide a framework in which the BLM and the operators will be able to respond to unpredicted environmental concerns or necessary management challenges without having to go back and develop a Supplemental EIS.

Through flexibility and many precedent setting decisions, the BLM (and the Forest Service to a lesser extent regarding its responsibilities for air quality), worked through their respective NEPA permitting processes to provide timely permission to the natural gas industry for 700 producing wells in a 200,000 acre project area. We believe the Pinedale Anticline EIS is a success story that illustrates how federal permitting agencies can work with the states, industry and environmentalists within the confines of NEPA without causing unduly delays to our business activities. Would I like to have started drilling 2 years earlier? You bet. But today, the reality is that Ultra and several other operators are now successfully doing our business which is drilling natural gas wells, we are earning a return on our invested capital and time, and we are working with the bureaucratic agencies and the public in a minimally conflictive, controversial environment. The local affected community fully participated in the NEPA process and acknowledged our right to be there and to drill wells. And we have acknowledged our responsibility to ensure that this is done in the most prudent manner with the least possible impact on the co-existing natural resources and other multiple use activities in the area including ranching, hunting, recreating and tourism.

Lest I paint too rosy of a picture, don't let me leave you today with the impression that it was always smooth and that all is well in the hinterlands with no room for improvement in the NEPA and permitting process for oil and gas activities. Nor let me leave you with the impression that Ultra was not disappointed on several occasions by bureaucratic inflexibilities and regulatory restrictions that we believe hindered the process and missed some important precedent setting opportunities for future EIS across the nation.

- Ultra voluntarily committed and spent over \$580,000 in collaboration with the Wyoming State Game and Fish Department, the University of Wyoming, and the BLM in order to collect and provide important baseline wildlife data for mule deer, pronghorn antelope and sage grouse activities prior to significant drilling activity, to later compare against data collected for the same species during intense drilling in order to determine real or perceived impacts - and formulate appropriate mitigation. Although appreciative, and it was widely recognized that the data provided was invaluable to enhancing management of these species, the BLM was unable to give us any regulatory incentives or subsequent APD permitting "credit" for this investment.
- The Pinedale Anticline field lies downwind from a major, grandfathered power plant operated by PacifiCorp. The Anticline field also lies within an airshed of concern to the State of Wyoming and consequently highlighted by input from the "Southwest Wyoming Technical Air Forum" in order to ensure compliance with the Regional Haze and Visibility requirements of the Clean Air Act. Given the way the USFS air permitting process works, the EIS document was going to model future

projected natural gas industry emissions from this project collectively with current cumulative emissions and if exceedances were revealed - as they had been in the previous Jonah EIS in the area - expensive mitigation or emission reductions would be imposed on our industry, as the last activity in the door causing the proverbial straw that broke the camel's back, regardless of the insignificance of our emissions when compared to other regional, grand-fathered sources. This is the issue that delayed a previous EIS by almost a year because of concern by the EPA. In an effort to ensure NO ADVERSE IMPACT to the air quality of the area, Ultra voluntarily invested \$2.5 million to help PacifiCorp purchase and install a low-Nox burner on one of its uncontrolled, grand fathered units at the Naughton Power Plant in order to significantly reduce the real amount of Nox emissions upwind that would adversely affect the air quality models for the Pinedale Anticline project. Because of this investment, we not only avoided procedural EIS delays from concerns over any adverse modeling results, but we actually cleaned up the airshed for the Wind River Mountains by about 2,000 less tons of Nox emissions from the Naughton power plant *per year*. The NOX emissions reductions and consequent air quality improvements are undeniable, but expensive. Ultra sought from the State of Wyoming and the EPA to develop a statewide Nox emissions trading program, similar to that which is utilized nationwide for control of Acid Rain, which would have allowed us to recoup part of our investment from the other producers and pipelines in the area as they actually created emissions. The idea was new, precedent setting, and regulatory difficult - and neither the State nor EPA created a program to accomplish this, thereby missing the opportunity to incentivize similar emission reduction behavior from other industries or, at a minimum, even allow us economic reward.

- At the beginning of the EIS, after discussions with the BLM and the Wyoming State Game & Fish Department, we realized that some of the greatest benefits to the affected wildlife would come from protecting habitat in areas away from our project area - namely other critical wintering areas or riparian areas that were under a high probability of sub-division which would have a greater adverse impact on the species than oil and gas development. We offered to institute an "off-site" mitigation fund for use by the BLM and Wyoming Game & Fish to actually spend industry dollars, on a per well drilled basis, to mitigate impacts to affected species in the locations that would render the greatest environmental bang for the buck, even though those locations may be outside of the EIS project area boundary (which was, in fact, determined more by the relevant leasehold and assumed geology situations than by any ecosystem considerations). The BLM informed us that they have a Solicitor's opinion and department policy prohibiting any off-site mitigation - regardless of the potential environmental benefit. This seemed like a great missed opportunity to us, for no reason but regulatory inflexibility.
- Finally, the data gathered during the EIS process showed that reducing disturbance to the surface and the habitat was going to be one of the best ways to minimize the significant impacts from our operations. Drilling several wells directionally from the same well pad was analyzed as one possible option to accomplish this. The cost of directional drilling is significantly higher than a traditional well bore, and directional drilling has traditionally been used by the industry for offshore operations or to access a location that for whatever reason cannot be reached by a straight hole from the top. To my knowledge, there is no EIS in the State of Wyoming that would require expensive directional drilling solely to minimize surface disturbance. A few years earlier, the BLM had initiated a "Green River Basin Advisory Committee" process, referred to as GRBAC, which considered various scenarios for streamlining NEPA, including using royalty reductions for incentives. We sought a legal interpretation to determine if royalty rate reductions under BLM's Eco-Royalty Relief Program could be applied to the Pinedale Anticline circumstances. Under the authority of the Mineral Leasing Act, 30 U.S.C.

Section 209 (1988), the Secretary of the Interior is authorized to grant reductions in production royalties as follows:

"The Secretary of the Interior, for the purpose of encouraging the greatest recovery of...oil, gas...and in the interest of conservation of natural resources, (emphasis added) is authorized to ...reduce the rental, or minimum royalty on an entire leasehold, or on any tract or portion thereof segregated for royalty purposes, whenever in his judgment it is necessary to do so in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms therein provided."

We made a case to the BLM that this authority could be applied to the Pinedale Anticline to incentivize directional drilling which, under normal regulatory circumstances, was significantly more expensive and significantly more risky from a technical feasibility standpoint. Again, the BLM informed us that they have a Solicitor's opinion prohibiting their ability to utilize their eco-royalty relief program in such a way to incentivize such environmental protection. [Let me add, in the ROD the BLM did not hesitate to impose a command and control type restriction on drilling in certain critical areas on the Pinedale Anticline and did, in fact, require directional drilling from limited surface locations OR required the utilization of centralized production facilities in order to minimize surface disturbance. This decision is the subject of an appeal of the EIS by one of the operators. Although the appeal has not delayed the ROD or subsequent industry activity, we believe the BLM could have avoided this costly legal battle by being receptive to an eco-royalty relief provision or some other creative incentive program that would reward companies for doing unconventional practices in the name of environmental protection, instead of mandating them.]

- And finally, upon achieving the successful completion of this EIS, we face the daily struggle with an overwhelmed and under-staffed BLM field office that is responsible for issuing all of the permits to drill in this highly productive area. First of all, there no mechanism in the permitting process to incentivize a company to strive for environmental protection beyond standard operating practices, thereby missing an opportunity to encourage companies to ease or expedite the process. And additionally, there appears to be no mechanism within the BLM to review the changing work loads and treat the various field offices as "cost centers", thereby better aligning the necessary staff and support needs with the resource activity level. Consequently, offices like that in Pinedale, has been barraged by industry activity in this newly developing area, but suffers from being grossly understaffed to handle the new oil and gas activity, not to manage continuing with its other responsibilities for managing grazing allotments and recreational use. Subcommittees like this one today look for causes for procedural delays from NEPA and other environmental regulations when we believe many such delays could be adequately addressed by more flexible and appropriate staffing in the active field offices. I would like to encourage this subcommittee to work with your colleagues on the Appropriations Committee to ensure that the Pinedale BLM Field office is more adequately staffed and funded in this fiscal year and into the foreseeable future to ensure that they can continue timely issuance of permits pursuant to the FEIS/ROD.

In summary, it has been Ultra Petroleum's experience that the National Environmental Policy Act works, albeit in a frustrating manner at times, and does provide for effective and sufficient resource extraction at the same time the environment is protected and public participation is allowed. It has also been Ultra's experience that the idea of capitalizing on or creating incentives in the marketplace or within the bureaucracy to better ease or quicken the NEPA process is grossly neglected by the federal government and that valuable opportunities for improvement are foregone.

I thank you for your time today and look forward to any questions you may have. I also offer my time in the future and that of my staff to work closely with you and your staffs to pursue any of the market-based

incentives that I have highlighted here or any others that could be possibly institutionalized to ease NEPA and the federal permitting process for the oil and gas industry.

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